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ABSTRACT

Findings are reported resulting from a 3-year study of the impacts of academic employment-discrimination litigation on the parties and their institutions. Two nationwide surveys were conducted, one of plaintiffs and one of university counsel. Six major lawsuits against colleges and universities were investigated by interviewing the plaintiffs and persons in their support networks, defendant faculty and administrators, and attorneys and judges. In addition, all academic employment-discrimination cases litigated in federal courts between 1972 and 1984 were reviewed to determine the win/loss record and the types and nature of the claims. From these data, conclusions are presented about the individual and institutional consequences of this litigation, and suggestions are offered to academic leaders. The following topics are addressed: trends in academic discrimination litigation; consequences for plaintiffs; career consequences; consequences for institutions and their leaders; and implications for academic leaders, including criteria for making the litigation decision and alternatives to litigation. (KM)

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by George R. LaNoue
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Discrimination Litigation in Academe: Effects on Institutions and Individuals

Introduction

Every so often, a lawsuit against an academic institution catches the public eye. An Allan Bakke or Jan Kemp becomes a media figure for a time and routine procedures of admissions or remediation become the subject of intense debate.

Cases attracting national publicity are rare, but legal challenges to academic decision making are increasingly common. Today, universities can be sued in their capacities as employer, contractor, research manager, housing authority, educator/evaluator of students, entertainer/promoter, land developer, and other assorted roles.

Most of these cases are settled privately or decided in state or local courts; the opinions are not published and draw little attention. But by examining published federal and state court decisions (the tip of the iceberg), we can see the dimensions of the problem. An average of fifteen judicial decisions involving colleges and universities were reported each year between 1946 and 1956; by 1969 there were 99 such decisions. Since then, their number has increased at a rate much faster than the general growth of litigation in the United States.

Although this trend is well known in academic circles, the impact of these suits on the mission, operation, image, and employees of these institutions has not been studied. One reason for this lack of attention is that courts have been deferential to academic institutions and that plaintiffs usually lose when they attack them. But universities as defendants have in fact lost important decisions with significant financial, organizational, and political impacts. Moreover, our research shows that just being sued, win or lose, is likely to have a negative effect on a college or university.

Lawsuits in which faculty challenge negative employment decisions are particularly troublesome because they strike at the heart of the academic value system about merit. A plaintiff's charge that an employment decision was motivated by unlawful discrimination is especially uncomfortable for an institution, for it requires a court to review the relative qualifications of the plaintiff and his or her colleagues, the motivations of the individuals making the decisions, and the integrity of the institution's personnel decision-making criteria and procedures. Little research has been done on what motivates plaintiffs to litigate, the reasons that a college or university might choose to defend a lawsuit rather than settle it or use an alternative dispute resolution process, the implications for administrators and faculty of testifying at trial, or on the long term effects on the plaintiffs or the institution itself.

The findings reported in this summary are the result of a three-year study that examined the impacts of academic employment-discrimination litigation on the parties and their institutions. Two nationwide surveys were conducted: one of plaintiffs, and one of university counsel. We also investigated six major lawsuits[1] against colleges and universities by interviewing the plaintiff and persons in their support network, defendant faculty and administrators, and attorneys and judges.

We also reviewed all academic employment-discrimination cases litigated in federal courts between 1972 and 1984 to determine the win/loss record for plaintiffs and defendant colleges and the type and nature of the claim (e.g., discrimination by race, sex, national origin). From these data, we present conclusions about the individual and institutional consequences of this litigation and offer suggestions to academic leaders faced with the prospect of it.

Trends in Academic Discrimination Litigation

Our analysis of cases litigated between 1972 and 1984 shows that institutions have been overwhelmingly successful in defending these cases, particularly those decided on the merits rather than on procedural grounds.

Looking first at the 156 procedural decisions decided in these years, 58 have been in the plaintiff's favor, 76 in the defendant's favor, and 21 have produced mixed results. Procedural decisions can be important to a college; a judicial denial of a motion for discovery of confidential personnel records, or a decision that a plaintiff did not file a timely lawsuit, can effectively end the litigation.

But decisions on the merits are more important for academe as a whole; they can affect the legality of general personnel practices or determine whether an individual or class of plaintiffs will be reinstated, receive back pay and attorney fees, and so on. Of the 160 cases that reached the merits over these thirteen years, plaintiffs won only 34—a success rate of approximately 20 percent. A significant factor behind this low rate of success has been a strong judicial reluctance to intervene in subjective academic judgments about the quality of an individual faculty member's performance. Even so, there are interesting sub-patterns. Individual white females (9 victorious decisions in 47) or blacks (0 of 11) or ethnics (1 of 12) suing historically white institutions almost never win. But classes of female faculty have prevailed in 5 of 12 cases. When white males or females sue black institutions, they are usually successful (8 of 12 cases).

Despite the difficulty plaintiffs face in winning, the initiation of litigation has not diminished; federal courts decide some thirty academic discrimination lawsuits each year, and hundreds of other suits are filed.

Whether or not an institution succeeds in its defense of of such suits, their costs are enormous. Tremendous workloads and expense are required for months of gathering and analyzing enormous amounts of personnel data, answering interrogatories, and giving depositions; the institution also bears costs in strained public relations, loss of productivity for faculty involved in the litigation as defendants, and divisiveness on campus about the merits of the case. Some institutions find that faculty peer committees and academic administrators become reluctant to make negative employment recommendations for fear of sustaining another lawsuit.

Thus, even a victory for an institution may be hollow. But, if the college or university loses, the costs escalate: there may be costs of reinstatement, back pay, and adjustments to benefits, and the law permits trial judges to

assess the college for the plaintiff's attorney fees. In a case against the University of Minnesota, the trial judge required the University to pay $2 million in fees to the plaintiff's attorney. Occasionally, as in the Minnesota case, the court will go further and require a total redesign of the faculty personnel decision-making structure.

Consequences for Plaintiffs

Our case study research and questionnaire data provided insights into plaintiff behavior and motivation.

Individual attitudes vary, but many plaintiffs reported to us that they genuinely believed they were "as good as," if not better qualified, for employment advancement (tenure, promotion, hiring, salary increase) as their colleagues. They knew that finding another academic position would be difficult, if not impossible, and concluded that litigation was a realistic alternative. None initiated the lawsuit lightly, though many were more confident of winning than the outcomes suggest they should have been.

Plaintiffs and Their Counsel

Plaintiffs' relationships with their attorneys were more difficult than we expected. Many changed attorneys before trial, or between the trial and the appeal. Approximately half of the plaintiffs worked closely with their counsel, obtaining and copying documents, collecting data and developing responses to interrogatories, and finding witnesses. Others did not, and chafed under the numerous delays, procedural machinations by one or both sides, and the mounting expenses of the discovery process. Few plaintiffs characterized their attorneys as "crusaders," and many found that their counsel were not as well informed about the intricacies of employment discrimination litigation as they might have been.

Plaintiff Support Networks

In a few well-publicized cases, plaintiffs have developed local or even national support networks. But most plaintiffs were not able (or did not attempt) to garner such support. In the class action cases we studied, campus-level support networks did emerge. But a surprisingly small number of individual plaintiffs reported any form of outside support—financial, political, or emotional—for their litigation. In fact, many reported strains in relationships with former colleagues, even those who supported their claim. The financial and emotional uncertainties of litigation were often traumatic for plaintiffs' families, too. The isolation of plaintiffs was more marked than we expected, and certainly more severe than most of them anticipated.

Career Consequences

In our sample of plaintiffs, over half were not employed at the institutions they sued by the end of the litigation. One would expect losing plaintiffs not to remain at their institution, but many of those who won also moved. One third of the plaintiffs left academe entirely; they blamed the strains created by the litigation process, rather than the institution, for their decision. Others, even those who won their suits, decided that they were not well suited for academic life. The degree to which the litigation process had a negative impact on even successful plaintiffs was striking.

Dr. Shymala Rajender, who won her case against the University of Minnesota but had to give up her profession as a chemist, recalled in our interview:

> You need to think about all those things before you plunge into this. I didn't have that kind of advice. I was one of the first few people. Fools rush in where angels fear to tread, and I was one of those fools who rushed in.
>
> Knowing what I know now, what might I have done when all these problems came? I might say, OK, to hell with it, I'm going to law school. I am sure the case is having an enormous impact in higher education, but from my personal point of view it was a terrible price to pay. I will carry the scars of battle for the rest of my life.

Our research revealed that few plaintiffs knew what they were getting into when they initiated litigation. Consequently, we developed the following checklist for faculty to consider before they file a lawsuit:

1. Do my faculty colleagues support me against the administration, or was the peer review recommendation negative?
2. Can I form a class of similarly affected individuals?
3. Can I involve a strong local or national network or organization in my case?
4. Do I know or can I find a competent attorney experienced in employment discrimination law and attuned to academic personnel decision-making processes?
5. Am I raising a new point of law, or is my case purely a matter of whether the negative decision was correct and fairly reached?
6. Does the institution have a pattern of settling employment disputes such as this one?
7. Am I willing to endure a lengthy, expensive, time-consuming process with the knowledge that plaintiffs rarely have won in these cases?
8. Do my family/friends support a decision to litigate after reading these questions?

Consequences for Institutions and Their Leaders

Academic leaders' reaction to being confronted with an allegation of employment discrimination vary with their prior experience. Administrators at large institutions where lawsuits are becoming routine may view the litigation as part of their job, as indeed it is. Other individuals, who have never endured a lawsuit before, may find being named a defendant in a discrimination lawsuit devastating. Corporate managers may become inured to accusations of perfidy against society, but academic administrators seldom are viewed, or view themselves, in such a way. Defendant faculty members tend to react with dismay at the prospect of testifying about their intentions and motivations or a personal recommendation they thought was confidential or may barely remember.

Defend or Settle?

The decision to defend or settle suits of this type is a critical one for institutions, yet some have not taken it as seriously as they should. Many considerations are involved in such a decision, including potential costs of defending the case through its various stages and appeals, the costs of negative publicity or a potential schism on campus, as well as the principles involved in the case. Many institutions decided that defending in principle their academic-evaluation process was more important than the financial and other costs of the litigation; sometimes important legal values are at issue as well. Other institutions have regretted seeking a judicial decision because plaintiffs won important victories that forced substantial changes in faculty evaluation processes, or the suit inflicted substantial financial, morale, or public relations damage (even if the plaintiffs lost).

Given these issues, responding to litigation should be viewed as an important management decision. In several instances, such a decision was never clearly made; indeed, the option of settlement may never have been considered by the institution's leaders. Some lawsuits should be defended vigorously just because the institution is in the right and important principles are at stake; but other lawsuits may not be worth the cost or effort, even if the institution is convinced that its conduct was lawful.

Role of the University Counsel

Many colleges and universities have full-time staff counsel, but outside counsel are frequently chosen to handle this kind of litigation. Outside counsel are used for many reasons: insurance carriers may provide them; public

institutions may be required to use the services of the state attorney general's office; the sheer complexity of an employment discrimination case argues for an attorney with special experience; and the time required to prepare such cases can quickly exhaust the resources of in-house counsel.

It is important to note that, if outside counsel is used, the attorneys must have a thorough understanding of academic employment practices, of the role of peer review in academic decision-making, and of the significance of various individuals and groups in the process. Even counsel experienced in defending employment discrimination claims against businesses may have little understanding of the unusual nature of academic personnel decisions, and such ignorance can be costly.

No matter who handles the suit itself, in-house counsel should be involved in the decision to litigate. Staff counsel, too, would play a role in the development of new or revised personnel decision-making policies that the institution may want (or be required) to put in place in response to the litigation.

Preparation for Trial

Because of the nature of employment discrimination litigation, the primary burden of producing documentary trial evidence falls on the defendant. It is sometimes said that the only certain winner will be Xerox, because of the amount and variety of information that must be reproduced.

Much of this data will focus on the plaintiff's claim that similarly situated faculty were treated more favorably. The plaintiff's personnel file is routinely requested, along with the personnel files of all other faculty in the plaintiff's department, school, (and sometimes the entire institution) who were promoted, tenured, or received salary increases. Also requested are documents such as policy statements regarding personnel procedures and criteria, faculty handbooks, memoranda concerning personnel actions, notes from meetings, and the votes and reasons therefore from peer review committees. All these items may be requested for a period of a decade or more.

Although a few institutions have been successful in shielding the identity of external evaluators, much material usually considered "confidential"—including minutes, memoranda, and other documents developed by institutional agents such as faculty peer committees—have been ruled relevant to the judicial inquiry into matters of employment discrimination. Furthermore, several institutions have been required to disclose all information relevant to the decision, including letters from external evaluators who were promised confidentiality. The disclosure of such information has been widely decried by both administrative and faculty professional organizations as inimical to the preservation of candor in peer review; an institution that makes such

disclosure may find it difficult to locate external evaluators the next time the need arises.

Whether or not the information sought is viewed as confidential, simply finding memoranda or documents may be difficult or impossible. Locating witnesses who were involved in earlier decisions (or who even remember how and why the decisions were made) may also be a problem.

Costs of Litigation

Whether or not the college or university prevails, the costs of litigation are substantial. The sheer breadth of materials demanded by the plaintiff's lawyer drives up costs in administrative and clerical time and for document reproduction. Institutions have spent hundreds of thousands of dollars in legal fees to limit the scope of discovery, especially in class action suits where every academic unit in the institution may be involved. If the case comes to trial, university administrators and faculty (and occasionally trustees) must be available to testify, perhaps more than once. And if the institution loses, back pay, adjustments to benefits, attorney fees, and other payments must be paid to the plaintiff.

Although most institutions carry insurance to cover such costs, carriers have been known to cancel the policies of an institution after a suit. Other carriers now refuse to provide liability coverage for trustees and administrators in general. Like other institutions, colleges and universities face an uncertain future in attempts to insure themselves from litigation expenses.

Another cost, to which a monetary value cannot be affixed, is in institutional morale, especially when a class action suit is initiated. In these cases, litigation pits the plaintiffs class against its peers, even if some peers support the suit. When an individual sues, the litigation may split a department or an entire institution into opposing camps. When a plaintiff challenges a negative decision made at the department level, but that decision was not unanimous, reliving the incident in court and repeating the reasons individuals voted as they did, erodes departmental cohesion. The plaintiff must, of necessity, demonstrate that colleagues are less well qualified, or no better qualified, than she or he, and thus that the negative decision was unfair; or the plaintiff may attempt to prove that the department's policies and procedures were unjust or violated. Plaintiffs may attempt to show that certain faculty were biased, vindictive, inconsistent in their judgments, or had a personal interest in a negative outcome for the plaintiff.

Particularly awkward is the necessary strategy of plaintiffs' attorneys to find one or more "comparator" faculty; comparators' qualifications and accomplishments will be examined microscopically at trial. Colleagues will be asked to justify a promotion or tenure decision for a given comparator in

the face of that person's alleged inadequate scholarship, teaching, or service. Perhaps the comparator embellished a curriculum vitae with questionable publications, or claimed a degree or qualifications that he or she does not possess. In this situation, one or more bystanders, who may have played no role in the negative decision, find their reputation and career on trial—and perhaps in tatters.

Princeton University's counsel, Thomas Wright, describes the campus consequences of faculty employment litigation:

> Institutions that have been through full-scale legal battles—a class action tenure dispute, with extensive discovery, and cross-examination by both parties of faculty in the same department, for example—can bear witness to the damaging effects for collegial relationships. Faculty subjected to such experience, even to serious threats of such an experience, can develop a new wariness and defensiveness. Information can then become a weapon—a sword or a shield. Evaluations can begin to be written in a different way. And anything that affects the free flow of information in an educational institution touches its life blood. If hesitancy creeps into the process of evaluation and critical judgment, teaching and scholarship can be compromised. Shying away from "hard" judgments, or avoiding conclusions based on "unprovable" institutions, are not healthy instincts in a college or university.[2]

Changes in Policies and Practices

Because of the high success rate of colleges and universities as defendants in these cases, few have felt compelled to change their promotion or tenure policies simply as a response to being sued. Several, however, have changed their policies in response to litigation involving other institutions or to federal regulatory agency requirements.

University counsel report frustration with administrative and faculty colleagues who cannot be persuaded to document their decisions more carefully, to seek the advice of counsel when a potentially sensitive decision is being made, or to give candidates for promotion or tenure explicit feedback concerning their performance. One commented, "Educators resent lawyers and only call upon them when problems come up that are generally political or have gone too far to stay out of court—then they want help and advice."

There are institutions, however, that have decided to practice preventive law and make more rational (and defensible) their faculty employment decision-making practices. The presence of faculty unions or state laws requiring internal grievance processes also help prompt a rationalization of policies and practices. In some cases, institutions have replaced broad, somewhat

vague criteria with more explicit statements that notify both the candidate and the decision makers as to what exact criteria may be used, when the decision must be made, and what information must be disclosed to the candidate. At other institutions, an accountability structure has been established that requires each decision-making individual or group to specify the reasons and document support for each employment recommendation made.

In two of the cases we studied, involving the University of Connecticut and the University of Delaware (both of which successfully defended discrimination lawsuits), the institutions implemented accountability systems that met multiple needs, including compliance with collective bargaining grievance procedures. The system also helps insure that faculty evaluations will be properly documented. At both institutions, a process similar to that described below is followed:

1. Probationary faculty are evaluated annually by either the department chair or a group of senior faculty, using the promotion standards appropriate to their department or discipline.
2. The results of the annual evaluation are forwarded to the dean and academic vice president.
3. Both the dean and the academic vice president review the evidence supporting the evaluation. If the evaluation is positive, but little evidence of successful performance accompanies it, the academic vice president (or the dean) calls the faculty member, department chair, and dean together and conducts a joint review of the faculty member's performance.
4. The performance of department chairs and deans in their annual evaluation of probationary faculty (e.g., the quality and documentation of their review) becomes one criterion upon which these individuals are reviewed for continuation of their administrative appointments.

Such a system seems to us to be a fair, sensible approach to preparing for the eventual promotion or tenure decision, to compiling a dossier concerning the candidate's performance, and to advising the candidate as to the institution's assessment of his or her performance. It also demonstrates to mid-level academic administrators (chairs and deans) the importance of carefully considered and documented faculty personnel decisions.

Implications for Academic Leaders

One of the purposes of this research was to identify ways in which the negative consequences of litigation could be minimized for all parties—plaintiffs, defendants, their counsel, and the justice system itself.

Certainly, one way is to reduce the number of lawsuits. A university cannot completely control who sues them and over what issues, but it can weigh carefully the decision to defend or settle. Our inquiries reveal that the president is sometimes not involved in that decision and, even if involved, frequently does not realize the seriousness (or credibility) of the complaint until the trial is under way. Considering the multiple costs and consequences of litigation, the president (and perhaps a trustee subcommittee, if not the full board) should make the decision to defend or settle.

A president may not find it easy to obtain accurate information about the facts of the case or its potential for success; individuals involved in the decision have personal interests to protect when divulging information. But accurate information is essential, and an "early warning" system should be devised so the president knows of problems with potential legal consequences.

Criteria for Making the Litigation Decision

Campus leaders should consider several issues when determining whether to defend a lawsuit or attempt a settlement.

1. Are the institution's procedures for evaluating faculty and for making hiring, promotion, and tenure decisions consistent with recognized external standards, such as the AAUP Standards? Courts have viewed such external standards as guidelines to reasonable academic practice, and have, on occasion, even incorporated AAUP standards into faculty employment contracts. If the institution's policies differ substantially from external standards, and the litigation is challenging the sufficiency or fairness of such procedures, it may be difficult for the institution to defend them.
2. Have federal or state regulatory agencies, funding sources, accrediting associations, or academic/professional associations found the institution in violation of accepted personnel standards? Such a finding is powerful evidence in court, and information from previous investigations or evaluations may be admissible if the plaintiff is attacking institution-wide policies.
3. Have other similar lawsuits been settled by the institution? If so, could such settlements be suggestive of fault in this case? If similar lawsuits were settled, why is the institution contemplating defending this one? Have the problems identified by earlier cases been resolved?

4. Is the case a class action, or could a class claim potentially arise from the plaintiff's allegations? If so, what proportion of faculty would be in the plaintiff class? Would settlement with one plaintiff be a satisfactory alternative (to the institution) to defending litigation by a class of faculty?

5. If the plaintiff's claim is one of individual discrimination, what point was the locus of the negative recommendation? Can this case be construed as an administrative overturning of a positive peer recommendation (which is more difficult to defend than a split or negative peer recommendation)? What is the department's record of recommending for or against the kind of decision challenged here (promotion, tenure, salary increase)? Is the plaintiff clearly inferior to departmental colleagues promoted or tenured in recent years?

6. How well documented is the decision, and to what degree does the documentation support the decision? How consistent have the recommendations been at each level of the decision-making process?

7. Can the lawsuit be settled for a moderate monetary amount without requiring reinstatement or substantial adjustments in rank and/or salary?

Other factors are important as well, although perhaps harder to determine. What will be the effect of the lawsuit on the college's public relations? What may be the effects on members of the protected class to which the plaintiff belongs? What effect will it have on potential donors? How might students and alumni react? Is the principle being challenged important for the institution to vindicate? Must the college or university defend the lawsuit in order to discourage other litigation? Consideration of the long-term interests of the institution is critical to the final decision to defend or to settle.

Alternatives to Litigation

Part of our research sought to determine the willingness of academic leaders to consider alternative dispute resolution mechanisms. The results were not encouraging: institutions have been very conservative in exploring mediation or arbitration alternatives. For example, in 1978 the Ford Foundation and the Sloane Commission on Government and Education funded the Center for Mediation in Higher Education; the Center offered both formal and informal mediation services plus expert assistance in developing internal grievance mechanisms. The Center failed because colleges and universities refused to use its services.

Our survey of university counsel inquired about this resistance to alternatives. Counsel responded that both they and their administrative colleagues preferred to submit disputes to a court; they viewed most plaintiffs' cases as without merit and were not willing to make the compromises that might

result from arbitration or mediation. Some wanted the security of a judicial ruling affirming the legality of the institution's conduct or procedures. Others cited the U.S. Supreme Court ruling in *Alexander v. Gardner-Denver*[3] that plaintiffs alleging civil rights violations are not legally bound by the findings of an arbitrator; to them, this case made alternatives to litigation meaningless for discrimination charges. Still others explained that administrators and faculty simply did not want an "outsider" second-guessing their personnel decisions (although, of course, a judge is also an "outsider").

These concerns are not without merit, but other concerns may be equally important. The potential of litigation to tear away at faculty and administrator morale and collegiality is clear. Many institutions have found that they lose more autonomy by placing a case before a judge than they would by submitting it to a mediator or arbitrator. Federal judges have been known to take over direct operation of school systems, mental hospitals, and prisons, and have ordered the restructuring of entire faculty personnel processes, most notably at the University of Minnesota and Montana State University.

Further, the judicial system that academic leaders prefer is itself turning to alternative systems of dispute resolution. Cases involving child custody, automobile accidents, and other disputes are routinely referred to a court-supervised mediation process in some states, and the use of private judges and arbitration is increasing, even in organizations that are not unionized. National organizations such as the American Arbitration Association and the National Institute on Dispute Resolution have developed training programs and serve as clearinghouses for information on litigation alternatives. The array of resources and experience is rich, and is there for higher education to take advantage of.

At the very least, an institution should consider establishing an internal grievance system, if one does not already exist. A recent report describing the use of such systems in several leading universities is encouraging and suggests several benefits.[4] A grievance procedure provides a forum for a disappointed or angry faculty member to "let off steam," perhaps diffusing the momentum for litigation. A grievance procedure identifies procedural weaknesses in an institution's personnel decision-making systems which can then be corrected by collegial process rather than by judicial decree. These procedures can enhance the fairness and consistency of personnel decisions, and provide a record for parties should the plaintiff decide to pursue formal litigation. Furthermore, when an institution can demonstrate that a faculty member received a full and fair evaluation, and had an opportunity to appeal the decision through a system carefully designed to discover wrongful conduct and procedural errors, courts have been more willing to view the decision process, and the decision itself, as fair and lawful.

Final Considerations

Litigation cannot be avoided completely, even if an institution's policies are sterling, a grievance system is in place, and an administrative accountability system is enforced. However, our research has brought forth recommendations—many of which come from academic leaders who have endured lengthy and costly litigation—that can deflect some litigation, enable the institution to settle other cases, and result in a more certain victory in court if the institution chooses to defend the suit.

The prevalence of litigation against academic institutions makes it clear that the decisions discussed in this report have become a fact of life for many academic administrators. The implications of those decisions for the internal life and future of the institution are substantial. They raise choices that deserve close attention and the best thinking of institutional leaders.

Notes

[1] *Acosta v. University of the District of Columbia*, 528 F. Supp. 1215 (D.D.C. 1981); *Kunda v. Muhlenberg College*, 463 F. Supp. 294 (D. Pa. 1978), *aff'd* 621 F. 2d 532 (3d Cir. 1980); *Lieberman v. Gant* (University of Connecticut), 474 F. Supp. 848 (D. Conn. 1979), *aff'd*, 630 F.2d 60 (2d Cir. 1980); *Mecklenberg v. Montana State University*, 13 Empl. Prac. Dec. 11,438 (D. Mont. 1976); *Rajender v. University of Minnesota*, 20 Empl. Prac. Dec. 30,214 (D. Minn. 1978), 20 Empl. Prac. Dec. 30,225 (D. Minn. 1979); *Scott v. University of Delaware*, 455 F. Supp. 1102 (D. Del. 1978), *aff'd* 601 F.2d 76 (3d Cir. 1979), *cert. denied*, 444 U.S. 931 (1979).

[2] Wright, Thomas H. "Faculty and the Law Explosion: Assessing the Impact—A Twenty-Five Year Pespective (1960-1985) for College and University Lawyers." *Journal of College and University Law*, Vol 12 (3), Winter 1985, pp. 363-379.

[3] *Alexander v. Gardner-Denver*, 415 U.S. 36 (1974).

[4] Estey, Martin. "Faculty Grievance Procedures Outside Collective Bargaining: The Experience at AAU Campuses." *Academe*, Vol.72, No.3 (1986), pp. 6-15.

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